IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 474 of 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
AHMAD MUSA GANDA & 2 - Opponent(s)

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Appearance :
Mr.K.C.Shah, APP for Appellant(s) : 1,
NANAVATI ASSOCIATES for Opponent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 26/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE SHARAD D.DAVE)

1. This is an appeal filed by the appellant State under Section 378 of the Code of Criminal Procedure, 1973 challenging the judgment and order dated 30.1.1982 passed by the learned Additional Sessions Judge, Baroda in Sessions Case No.89 of 1981 whereby the learned Additional Sessions Judge had acquitted all three accused for the offences punishable under Sections 302, 326, 504, 506 read with Section 34 of Indian Penal Code.

2. The short facts giving rise to this appeal are such that :

2.1 That on the day of the incident, when the complainant was sitting on his ota, the deceased came there and informed him that the deceased had constructed a slopped passage (water-course) in the field and 10 days before, he had dumped the same, which was again dug by the accused for the purpose of taking water to their field and therefore, he was going to persuade them; that the complainant asked the deceased to persuade them quietly, not to dig the slopped passage, as damage would be caused to their cotton crop; that, the deceased left for the field and then at about 12.00 p.m., one Suleman Musa Chandia came to complainant and informed that at about 11.00 a.m., there was dispute between the deceased on one hand and the accused on the other hand, and in that incident, his brother had received injuries and accused had also fled the place, and at the field Gulam Chhotu, Yusuf Chhotu, Nasim Chhotu

and servant Chatur Vasava were present; the complainant went to the place where he saw his brother lying on the ground and he also saw injuries on his chest, abdomen and he was bleeding; that whereupon the complainant asked those four as to how incident occurred, and they informed him that all the three accused have committed murder of his brother by inflicting knife blows and that they have witnessed the incident, that the complainant asked them to sit there and he filed complaint thereafter. After the investigation was over, the charge sheet was filed by the Investigating Officer, Karjan for the offences under Sections 302, 504, 506 and 114 of the Indian Penal Code against the three accused in the Court of J.M.F.C., Karjan.

3. As the offences charged were exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Karjan committed the case to the Court of Sessions, Vadodara.

4. The learned Additional Sessions Judge, Vadodara framed the charge against the accused and after recording the evidence and hearing the learned counsel for both the sides, acquitted all the three accused of the offences punishable under Sections 302, 326 and 504 of Indian Penal Code against which the present appeal is filed.

During pendency of the appeal, respondent no.1 – original accused no.1 – Ahmed Musa Ganda had

expired and appeal against him was abated vide order dated 17.8.2006. Hence, the appeal was heard qua remaining accused.

5. Heard Mr.K.C.Shah, learned APP for the appellant – State and Mr.K.J.Panchal, learned advocate for the respondents – accused.

6. The judgment is challenged on various grounds mentioned in para 3 of the memo of appeal. Mr.K.C.Shah, learned APP has taken us through the relevant part of the judgment and oral as well as documentary evidence led during the course of trial.

7. The learned trial Judge, while appreciating the evidence of the witnesses, has given the finding that the witnesses on whose evidence the reliance is placed are all interested witnesses and that there are many infirmities in the evidences.

8. The learned trial Judge has also come to the conclusion that while reading the deposition of P.W.1 doctor, the injury certificate and the cross complaint filed by the accused together, there are two sets of evidence and as per the settled legal position, the learned trial Judge has given benefit of doubt to the accused and acquitted them.

9. The learned trial Judge, while appreciating the say of PW 2 Dr.Vyomeshchandra Dayaljibhai Gohil Exh.19 who is the Doctor who performed the autopsy of

deceased Ahmedbhai Ibrahimbhai, has come to the conclusion that he has categorically stated the injuries which can be caused by the said weapons. He has also stated that the injury cannot be caused by the hoe-pavda as the margin of the said hoe-pavda allegedly used in the incident was blunt.

10. The learned trial Judge, while appreciating the say of P.W.4 – Daud Husen Chhotu complainant and brother of the deceased, has come to the conclusion that there are material contradictions in his deposition as he has tried to improve the version. According to him in the complaint, he has derived the knowledge of the incident from P.W. 5 Gulam Ahmed Chhotu whereas in the deposition, he has tried to pose as if he is an eye-witness in the incident. The learned trial Judge, has further held that as per the case of the prosecution the accused no.1 was armed with dagger, accused no.2 was armed with spade and accused no.3 was armed with hoe-pavda. The medical evidence says that the injuries nos.1 and 2 were possible by dagger and are sufficient to cause death in the ordinary course of nature. Therefore, the learned trial Judge has acquitted the accused nos.2 and 3 from the charges levelled against them.

11. The learned trial Judge also discussed the evidence of P.W.7 – Chaturbhai Vasava who is the servant of the deceased and the eye-witness to the incident and came to the conclusion that he was the servant of the deceased and was under the obligation

of the deceased and, therefore, his evidence does not inspire confidence.

12. The learned trial Judge, while acquitting accused no.1, has recorded that there are material contradictions in the ocular evidence and the medical evidence to the effect that the witnesses stated before the Court that two injuries were given by dagger on the deceased by accused no.1 whereas the medical evidence shows five injuries. Further, it is also held that the common intention to kill the deceased is also not proved because they all met at 11.00 a.m., and the instruments alleged to have been with them at that time were all agricultural instruments and admittedly they are agriculturists and they were cultivating the land at the time of incident. Therefore, considering all these aspects, the learned Judge came to the conclusion that there is nothing on record to involve these accused in the crime in question, and, therefore, acquitted the accused.

13. In view of the above, we do not find any perversity or illegality in the findings. It is now settled that when the appellate forum is in agreement with the reasons assigned by the lower court, then it is not necessary to rewrite those reasons. There is no scope of reappreciation of the evidence unless the Appellate Court finds perversity in the finding as well as gross error in appreciation of the evidence. It is also well settled that when two views are

possible from the record then the view in favour of the accused is normally accepted except in rarest of rare case. We are of the opinion that this cannot be said to be rare case where the acquittal is required to be converted into that of conviction.

14. In view of the aforesaid discussion, we do not find any substance in this appeal and, therefore, the same is dismissed.

(C.K.Buch,J) (Sharad D.Dave,J)

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